

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

Federal-State Joint Board on )  
Universal Service )

CC Docket No. 96-45

## RECOMMENDED DECISION

Adopted: February 27, 2004

Released: February 27, 2004

By the Federal-State Joint Board on Universal Service: Commissioners Abernathy, Jaber, and Dunleavy, and Consumer Advocate Gregg, issuing separate statements; Commissioner Martin dissenting in part, concurring in part, and issuing a separate statement; Commissioners Adelstein, Thompson, and Rowe approving in part, dissenting in part, and issuing a joint separate statement.

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Appendix A – Parties Filing Comments and Reply Comments

## I. INTRODUCTION

1. In this Recommended Decision, the Federal-State Joint Board on Universal Service ("Joint Board") provides its recommendations concerning the process for designation of eligible telecommunications carriers (ETCs) and the Commission's rules regarding high-cost universal service support. Citing changes in the marketplace since the Commission's rules were first adopted in 1997, the Commission requested that the Joint Board "review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled."<sup>1</sup> Consistent with the Commission's directive in the *Referral Order*, we sought comment and held a public forum to address concerns regarding the designation and funding of ETCs in high-cost areas.<sup>2</sup> We provide our recommendations based on our review and consideration of the record developed in this proceeding. Overall, we believe that our recommendations will preserve and advance universal service, maintain competitive neutrality, and ensure long-term sustainability of the universal service fund.

2. Specifically, we recommend that the Commission adopt permissive federal guidelines for states to consider in proceedings to designate ETCs under section 214 of the Communications Act of 1934, as amended ("Act").<sup>3</sup> We believe that permissive federal guidelines for minimum ETC qualifications would allow for a more predictable application process among states. We also believe that our recommended guidelines would assist states in determining whether or not the public interest would be served by a carrier's designation as an ETC. In so doing, we believe that guidelines should improve the long-term sustainability of the universal service fund, as only fully qualified carriers that are capable of, and committed to, providing universal service would be able to receive support. We recognize that there are instances where carriers are not subject to the jurisdiction of a state commission and that the Commission has explicit authority to designate carriers in these circumstances. Specifically, while section 214(e)(2) of the Act gives state commissions the primary responsibility for designating ETCs, section 214(e)(6) directs the Commission to designate the carriers when those carriers are not subject to the jurisdiction of the state commission. In these cases, we believe that the Commission should apply the proposed guidelines.

3. We also recommend that the Commission limit the scope of high-cost support to a single connection that provides access to the public telephone network. We believe that supporting a single connection is more consistent with the goals of section 254 of the Act than the present system, and is necessary to preserve the sustainability of the universal service fund. We also believe that it would send more appropriate entry signals in rural and high-cost areas, and would be competitively neutral. To

<sup>1</sup> *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 17 FCC Rcd 22642, para. 1 (2002) (*Referral Order*).

<sup>2</sup> On February 7, 2003, the Joint Board issued a Public Notice inviting public comment on whether the Commission's rules concerning high-cost support and the ETC designation process continue to fulfill their intended purposes. See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 1941 (Jt. Bd. 2003) (*Joint Board Portability-ETC Public Notice*). On July 31, 2003, the Joint Board held an en banc hearing on the Commission's rules on designation and funding of ETCs in high-cost areas. See [http://www.fcc.gov/wcb/universal\\_service/documents/030731.pdf](http://www.fcc.gov/wcb/universal_service/documents/030731.pdf). See also *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on the Portability of High-Cost Universal Service Support and the ETC Designation Process*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 14486 (Wir. Comp. Bur. 2003) (providing notice of Joint Board en banc hearing).

<sup>3</sup> See 47 U.S.C. § 214. The Communications Act of 1934 was amended by the Telecommunications Act of 1996 Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

minimize the potential impact of restricting the scope of support in areas served by rural carriers, we recommend that the Commission seek comment on restating the total high-cost support flowing to a rural carrier in terms of first connections, and on other possible measures.<sup>4</sup> As discussed below, we also recommend that the Commission seek comment on whether to restate support for non-rural carriers.<sup>5</sup> In conjunction with these measures, we also recommend that high-cost support in areas served by rural carriers be capped on a per-line basis where a competitive carrier is designated as an ETC, and adjusted annually by an index factor.<sup>6</sup>

4. At this time, we decline to recommend that the Commission modify the basis of support (i.e., the methodology used to calculate support) in study areas with multiple ETCs. Instead, we recommend that the Joint Board and Commission consider possible modifications to the basis of support as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.<sup>7</sup> We believe that examining the basis of support for all ETCs under the rural and non-rural federal support mechanisms simultaneously would allow the Joint Board and the Commission to craft a more comprehensive approach and avoid the perils of piecemeal decision-making. If the Commission adopts our recommendations to limit the scope of support and to ensure that ETC designations are appropriately rigorous, such steps should slow fund growth due to competitive entry in the meantime.

## II. ETC DESIGNATION PROCESS

5. We recommend a variety of measures below that relate to state proceedings involving designation of ETCs. To increase the opportunities for state commissions to conduct rigorous proceedings, we recommend that the Commission adopt permissive guidelines for minimum ETC qualifications. We also offer some guidance for state commissions in interpreting the public interest test found in section 214(e). In addition, we address the annual certification requirements under section 254(e) and recommend that the Commission encourage states to use that process to ensure that all ETCs use federal universal service support to provide the supported services and for associated infrastructure costs. Finally, we offer some observations regarding the service area redefinition process and disaggregation of support by rural carriers. We note here that in instances where carriers are not subject to the jurisdiction of a state commission, we urge the Commission to apply these same measures.

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<sup>4</sup> The term "rural carriers" refers to incumbent local exchange carriers (LECs) that meet the statutory definition of rural telephone company in section 153(37) of the Act. See 47 U.S.C. § 153(37). Under this definition, rural telephone companies are incumbent LECs that either serve study areas with fewer than 100,000 access lines or meet one of three alternative criteria. *Id.* The term "non-rural carriers" refers to incumbent LECs that do not meet the statutory definition of a rural telephone company.

<sup>5</sup> See *supra* para. 76.

<sup>6</sup> We note that, if the Commission were to adopt the "hold harmless" approach discussed below, per-line support would not be capped for incumbent carriers. See *infra* at para. 75. For purposes of this Recommended Decision, references to "line" or "per-line" are generally synonymous with "connection" or "per-connection." The use of the term "line" is intended to relate to services provisioned over either wireline or wireless technology.

<sup>7</sup> See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11310, para. 169 (2001) (*Rural Task Force Order*); see also *Federal-State Joint Board on Universal Service, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-249 (rel. Oct. 27, 2003) at para. 25 (*Tenth Circuit Remand Order*).

## A. Background

6. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."<sup>8</sup> Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC).<sup>9</sup>

7. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.<sup>10</sup> Under section 214(e)(2), "[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier" for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1). Section 214(e)(2) further states: "[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."<sup>11</sup>

8. A state commission must allow an ETC to relinquish its designation in any area served by more than one ETC pursuant to section 214(e)(4) of the Act.<sup>12</sup> The relinquishing ETC must provide advance notice of such relinquishment to the state commission.<sup>13</sup> Prior to allowing the relinquishing carrier to cease providing universal service, the state commission must require the remaining ETC or ETCs to ensure that all customers served by the relinquishing carrier will continue to be served. The state commission also must require sufficient notice to the remaining ETC or ETCs to permit the purchase or construction of adequate facilities.<sup>14</sup> The state commission must establish a time, not to exceed one year after the state commission approves the relinquishment, within which such purchase or construction by the remaining ETC or ETCs must be completed.<sup>15</sup> The same ETC relinquishment procedure is also required of the Commission in instances where a carrier is not subject to the jurisdiction of a state commission.

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<sup>8</sup> 47 U.S.C. § 254(e).

<sup>9</sup> 47 U.S.C. § 214(e)(1). The "service area" is the geographic area established by the state commission for the purposes of determining universal service support obligations and support mechanisms. 47 U.S.C. § 214(e)(5). In the case of an area served by a rural carrier, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company. *Id.*; see *infra* paras. 49-53.

<sup>10</sup> 47 U.S.C. § 214(e)(2). We note that the Commission has authority for performing ETC designations for carriers that are not "subject to the jurisdiction of a State commission" pursuant to 214(e)(6). 47 U.S.C. § 214(e)(6). The Commission's requirements for ETC designations in section 214(e)(6) parallel the states' requirements for ETC designations in section 214(e)(2). *Id.*

<sup>11</sup> 47 U.S.C. § 214(e)(2).

<sup>12</sup> See 47 U.S.C. § 214(e)(4).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

**B. Discussion****1. Federal Guidelines for ETC Designations**

9. We recommend that the Commission adopt permissive federal guidelines for states to use when determining whether applicants are qualified to be designated as ETCs under section 214. We believe that guidelines are appropriate because the ETC application and designation process should be one that is rigorous. A rigorous ETC designation process should ensure that only fully qualified applicants receive designation as ETCs and that ETC designees are prepared to serve all customers within the designated service area. Additionally, a core set of minimum qualifications would allow for a more predictable application process among the states. We believe that our recommended guidelines would assist states in determining whether or not the public interest would be served by a carrier's designation as an ETC. We also believe that guidelines should improve the long-term sustainability of the fund, as only fully qualified carriers that are capable of, and committed to, providing universal service would be able to receive support.

10. We believe that federal guidelines concerning ETC qualifications should be flexible and non-binding on the states. Under our recommendation, state commissions would retain their rights to determine eligibility requirements for designating ETCs. Each state commission will be uniquely qualified to determine its own ETC eligibility requirements as the entity most familiar with the service area for which ETC designation is sought. Because these guidelines would be permissive, we reject the parties' arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations.<sup>16</sup> We also believe that federal guidelines are consistent with the United States Court of Appeals for the Fifth Circuit holding that nothing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements beyond the statutory requirements described in section 214(e)(1).<sup>17</sup> Even with the advent of permissive federal guidelines for ETC designations, states will continue to have the flexibility to impose additional eligibility requirements.

11. Federal guidelines concerning minimum qualifications should encourage state commissions to conduct rigorous reviews of ETC applications, including fact-intensive analyses. Because an ETC must be prepared to serve all customers within a designated service area, and must be willing to be the sole ETC should other ETCs withdraw from the market, states may appropriately establish minimum qualifications focused on the carrier's ability to provide the supported services to all consumers in the designated area upon reasonable request.<sup>18</sup> Guidelines encouraging a rigorous application process are appropriate because section 214(e)(2) requires that designation of an additional ETC serve the public interest. Consistent with Section 254(b)(3) of the Act, we believe that a rigorous application process ensures that consumers in all regions of the nation, including rural and low-income consumers, have access to telecommunications services that are reasonably comparable to services provided in urban areas.<sup>19</sup>

<sup>16</sup> See, e.g., CTIA Comments at 10; Idaho Tel. Ass'n Comments at 12; Montana Telecomms. Ass'n Comments at 10; Nebraska Rural Indep. Cos. Comments at 27.

<sup>17</sup> See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999) (*TOPUC v. FCC*). The Fifth Circuit addressed the question of whether states may subject carriers designated as ETCs to eligibility requirements above and beyond the eligibility requirements of section 214(e)(1) of the Act. *Id.* See also Washington Indep. Tel. Ass'n Comments at 17.

<sup>18</sup> See 47 U.S.C. § 214(e)(4).

<sup>19</sup> 47 U.S.C. § 254(b)(3).

12. In recommending federal guidelines, we reject the arguments of some commenters that the current ETC criteria should not be expanded.<sup>20</sup> Instead, we believe that a specific, fact-intensive inquiry is the appropriate way to analyze the public interest when evaluating an ETC application for a rural area. For example, some commissions have cited generalized benefits of competition when evaluating ETC applications. While this may be appropriate, we do not believe that such an analysis is sufficient by itself. Section 214(e)(2) requires states to undertake a fact-intensive analysis to ensure that the designation of any additional ETCs will promote the goals set forth in section 254 of the Act in the affected area. We discuss below some of the factors states may choose to consider in conducting this fact-intensive inquiry.

13. We believe that adopting a core set of minimum qualifications will promote a predictable application process across states and provide certainty for states in terms of what guidelines may be appropriate to consider in the public interest analysis. Many commenters, including incumbent LECs and their competitors, support this goal and achieving this goal should benefit incumbent LECs and competitors alike.<sup>21</sup> Permissive guidelines will enable state commissions, when evaluating ETC designation requests, to evaluate section 214(e)(2) petitions in light of at least a minimum set of criteria. We agree with the commenters that permissive guidelines could improve consistency in the treatment of requests for ETC status.<sup>22</sup> However, the goal of predictability will be promoted if states and the Commission both apply similar guidelines. Thus, we strongly encourage the adoption of the proposed guidelines. Guidelines should also help address arguments about what is appropriate for states to consider as part of the public interest analysis.

#### a. Applicability of Guidelines

14. We recommend that state commissions apply these permissive federal guidelines in all ETC proceedings. An ETC petition presented to a state commission can affect an area served by a non-rural carrier,<sup>23</sup> an area served by one or more rural carriers,<sup>24</sup> or both.<sup>25</sup> A single set of guidelines will encourage states to develop a single, consistent body of eligibility standards to be applied in all cases, regardless of the characteristics of the wireline incumbent carrier.<sup>26</sup>

15. Permissive federal guidelines for all ETC cases would be consistent with section 214(e)(2). That section prescribes that all state certification decisions must be consistent with the public interest,

<sup>20</sup> See, e.g., GCI Reply Comments at 27-28; Western Wireless Reply Comments at 42; Rural Cellular Ass'n/Alliance of Rural CMRS Carriers Reply Comments at 16-17.

<sup>21</sup> See, e.g., Alaska Tel. Ass'n Comments at 3-5; BellSouth Reply Comments at 2-4; Dobson Comments at 15; MCI Comments at 7. See also NASUCA Comments at 9.

<sup>22</sup> See, e.g., Dobson Comments at 15 (stating that uniform applications and procedures for analyzing the statutory ETC designation criteria might make the ETC designation process easier and more predictable for states and carriers).

<sup>23</sup> See, e.g., *Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996, RCC Atlantic, Inc. d/b/a Unisel*, Docket No. 5918 (Vt. Pub. Serv. Bd. June 26, 2003) (*Vermont Unisel ETC Order*).

<sup>24</sup> See, e.g., *Request by Alaska Digitel, LLC for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996*, U-02-39, Order No. 10, Order Granting Eligible Telecommunications Carrier Status and Requiring Filings (Reg. Comm'n of Ala. Aug. 28, 2003) (*Alaska Digitel ETC Order*).

<sup>25</sup> See, e.g., *Wisconsin U.S. Cellular ETC Order*.

<sup>26</sup> Although we intend the guidelines to apply in areas served by both rural carriers and non-rural carriers, we believe that states and the Commission should apply a higher level of scrutiny when evaluating ETC applications for designations in areas served by rural carriers. See *infra* paras. 17-18.

convenience, and necessity. We believe this statutory requirement demonstrates Congress's intention that state commissions evaluate local factual situations in ETC cases and exercise broad discretion in reaching their ultimate conclusion regarding the public interest, convenience and necessity. This view is also consistent with the ruling of the Fifth Circuit in *TOPUC v. FCC*, which held that states may impose their own eligibility requirements beyond those listed in section 254(b)(1).<sup>27</sup>

16. We also believe that applying the permissive federal guidelines to all state ETC proceedings will best promote federal universal service goals found in section 254(b). While Congress delegated to individual states the right to make ETC decisions, collectively these decisions have national implications. They affect not only the dynamics of competition in the areas subject to the proceedings, but also the national strategies of new entrants. They also affect the overall size of the federal fund. We anticipate that the adoption of recommended federal guidelines would facilitate results that are fully consistent with the goals of section 254. In addition, broadly applied recommended federal guidelines would be most likely to ensure designation of carriers that are: financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, able to be the sole ETC in a service area if all other ETCs relinquish their designations, and able to provide consumers an evolving level of universal service.

17. Rigorous review of ETC applications assumes added importance in areas served by rural carriers. The Act contains added requirements in these cases. Although Congress provided that states *shall* designate more than one ETC in areas served by non-rural carriers (provided such designation is consistent with the public interest, convenience, and necessity), the Act provides that states *may* designate multiple ETCs in areas served by rural carriers — thereby suggesting that states have greater discretion when evaluating applications for designation in rural carrier service areas.<sup>28</sup> In addition, before a state may designate an additional ETC in an area served by a rural carrier, the state must affirmatively find the designation to be in the public interest.<sup>29</sup> In establishing these additional statutory protections, we believe that Congress intended state commissions to exercise a higher level of scrutiny when evaluating ETC applications for designations in rural carrier service areas.<sup>30</sup> Permissive federal guidelines for minimum eligibility should assist states in effectuating that higher level of scrutiny in areas served by rural carriers.

18. The characteristics of many rural carrier service areas also support a more rigorous standard of eligibility. Rural carrier service areas often have low customer densities and high per-customer costs. Subsidies flowing from federal and state universal service funds are often substantial. The Rural Task Force in White Paper #2 documented these effects and explained that rural carriers serve areas with lower population and line density and serve a smaller proportion of business customers.<sup>31</sup> These circumstances support our belief that state commissions should apply a particularly rigorous standard to the minimum

<sup>27</sup> See *TOPUC v. FCC*, 183 F.3d at 418.

<sup>28</sup> 47 U.S.C. § 214(e)(2). See also *TOPUC v. FCC*, 183 F.3d at 418. We note that the Arkansas Telecommunications Regulatory Reform Act of 1997 states that for purposes of the Arkansas state universal service fund and the federal universal service fund, there "shall be only one. . . [ETC] which shall be the incumbent [LEC] that is a rural telephone company. . ." See Act 77 of 1997, Senate Bill 54, 81st General Assembly, Regular Session, codified at Ark. Code Ann. § 23-17-405(d)(1).

<sup>29</sup> 47 U.S.C. § 214(e)(2).

<sup>30</sup> In its comments, OPASTCO argues that Congress recognized in section 214(e)(2) of the Act that supporting competition would not always serve the public interest in areas served by rural telephone companies. See OPASTCO Comments at 40-41.

<sup>31</sup> The Rural Difference, Rural Task Force, White Paper 2, January 2000, at 9-11 (*RTF White Paper*).

qualifications of applicants seeking ETC designation in rural carrier service areas.<sup>32</sup>

**b. Existing Minimum Eligibility Requirements**

19. Before suggesting new minimum eligibility requirements, we begin with a review of the requirements for designation of ETCs as specified by section 214(e)(1) of the Act. First, a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area.<sup>33</sup> The ETC must offer such services either using its own facilities or a combination of its own facilities and resale of another carrier's services.<sup>34</sup> The services that are supported by the federal universal service support mechanisms are defined as: (1) voice grade access to the public switched network;<sup>35</sup> (2) local usage;<sup>36</sup> (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent;<sup>37</sup> (4) single-party service or its functional equivalent;<sup>38</sup> (5) access to emergency services, including 911 and enhanced 911;<sup>39</sup> (6) access to operator services;<sup>40</sup> (7) access to interexchange services;<sup>41</sup> (8) access to directory assistance;<sup>42</sup> and (9) toll limitation for qualifying low-

<sup>32</sup> We also recognize that there are rural communities that are served by non-rural carriers. See *RTF White Paper* at 8 (stating that both rural and non-rural carriers service rural communities).

<sup>33</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>34</sup> *Id.* An entity that offers the supported services exclusively through resale shall not be designated as an ETC. See 47 C.F.R. § 54.201(i).

<sup>35</sup> "Voice grade access" is defined as a "functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call." For the purposes of Part 54, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz. 47 C.F.R. § 54.101(a)(1).

<sup>36</sup> "Local usage" means an "amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users." 47 C.F.R. § 54.101(a)(2).

<sup>37</sup> "Dual tone multi-frequency" (DTMF) is defined as a "method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time." 47 C.F.R. § 54.101(a)(3).

<sup>38</sup> "Single-party service" is defined as "telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission." 47 C.F.R. § 54.101(a)(4).

<sup>39</sup> "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. "911" is defined as a "service that permits a telecommunications user, by dialing the three-digit code '911,' to call emergency services through a Public Service Access Point (PSAP) operated by the local government." "Enhanced 911" is defined as "911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party." "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems. 47 C.F.R. § 54.101(a)(5).

<sup>40</sup> "Access to operator services" is defined as "access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." 47 C.F.R. § 54.101(a)(6).

<sup>41</sup> "Access to interexchange service" is defined as the "use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network." 47 C.F.R. § 54.101(a)(7).

<sup>42</sup> "Access to directory assistance" is defined as "access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings." 47 C.F.R. § 54.101(a)(8).



income customers.<sup>43</sup> Second, throughout the service area for which designation is received, the ETC must advertise the supported services and the charges therefore using media of general distribution.<sup>44</sup> Pursuant to section 214(e)(1)(B), an ETC is required to advertise the availability and prices charged for the services that are supported by federal universal service support.<sup>45</sup> An ETC must also advertise the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services.<sup>46</sup>

20. While section 214(e)(1) requires an ETC to “offer” the services supported by the federal universal service support mechanisms, the Commission has determined that this does not require a competitive carrier to actually provide the supported services throughout the designated service area before designation as an ETC.<sup>47</sup> In the *Section 214(e) Declaratory Ruling*, the Commission concluded that interpreting section 214(e)(1)(A) to require the provision of service throughout a service area before ETC designation prohibits, or has the effect of prohibiting, the ability of competitive carriers to provide telecommunications service, in violation of section 253(a).<sup>48</sup> The Commission found that such an interpretation of section 214(e)(1) is not competitively neutral, consistent with section 254, or necessary to preserve and advance universal service. In addition, the Commission concluded that such a requirement conflicts with section 214(e) and stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress as set forth in section 254.<sup>49</sup> Consequently, the Commission concluded that requiring the provision of service throughout the service area before designation would effectively preclude designation of new entrants as ETCs in violation of the intent of Congress.

### c. Additional Minimum Eligibility Requirements

21. For the reasons stated above, we recommend that state commissions consider the additional minimum qualifications listed below when evaluating ETC designation requests.

<sup>43</sup> “Toll limitation” means either toll blocking or toll control for ETCs that are incapable of providing both services. For ETCs that are capable of providing both services, “toll limitation” means both toll blocking and toll control. 47 C.F.R. §§ 54.101(a)(9) and 54.400(d). “Toll blocking” is a service provided by carriers that allows consumers to elect not to allow the completion of outgoing toll calls from their telecommunications channel. 47 C.F.R. § 54.400(b). “Toll control” is a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle. 47 C.F.R. § 54.400(c).

<sup>44</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>45</sup> *Id.*

<sup>46</sup> 47 C.F.R. §§ 54.405(b) and 54.411(d). Lifeline is a program that provides discounts to consumers on their monthly telephone bills. See 47 C.F.R. §§ 54.401-54.409. Link Up helps consumers with telephone installation costs. See 47 C.F.R. §§ 54.411-54.415. In its *Twelfth Report and Order*, the Commission created a fourth tier (\$25.00 per month) of federal Lifeline support and established additional Link-Up support (\$70.00 per consumer) which is available to ETCs serving qualifying low-income individuals living on tribal lands. See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 12208 (2000) (*Twelfth Report and Order*).

<sup>47</sup> *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, CC Docket No. 96-45, 15 FCC Rcd 15168, 15172-73 (2000), recon. pending (*Section 214(e) Declaratory Ruling*).

<sup>48</sup> *Id.*

<sup>49</sup> *Section 214(e) Declaratory Ruling*, 15 FCC Rcd at 15179-81.

**(I) Adequate Financial Resources**

22. We recommend that the Commission adopt guidelines encouraging states to evaluate whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area. We believe that it would neither be prudent nor serve the public interest if a financially unsound carrier is designated as an ETC, receives universal service support and yet is still unable to achieve long-term viability that is sufficient to sustain its operations. In order to provide guidance in this area, we recommend that the Commission seek to further develop the record on the ways in which state commissions may determine whether an ETC applicant has adequate financial resources. Long-term viability can be based, for example, on plans that tie investment to customer growth and demands. In this regard, we note that the Commission has held that a new entrant "cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support" and "[i]n fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC."<sup>50</sup>

**(II) Commitment and Ability to Provide the Supported Services**

23. We recommend that the Commission adopt a guideline encouraging state commissions to require ETC applicants to demonstrate their capability and commitment to provide service throughout the designated service area to all customers who make a reasonable request for service. States should require a demonstration of capability and commitment because this will help them ensure that an ETC applicant is willing and able to provide the supported services throughout the designated service area and to be the sole ETC in a service area if the incumbent LEC relinquishes its designation. States should have flexibility in implementing this guideline.

24. State commissions may choose to implement this requirement, for example, by requiring a formal build-out plan for areas where facilities are not yet built out at the time the ETC application is considered. State commissions have examined ETC applicants' plans to serve new customers and build out their networks in a variety of ways. For example, the Arizona Corporation Commission (Arizona Commission) has evaluated an ETC's plans to assist potential customers to receive service by employing various technical means.<sup>51</sup> The Arizona Commission noted that the ETC had been operating for nearly ten years and had worked with five Native American tribes to secure adequate cell sites on Native American lands.<sup>52</sup> In another case, a Minnesota Administrative Law Judge (Minnesota ALJ) examined an ETC's plans to provide universal service to customers using .6-watt handheld phones or a 3-watt telephone and noted the applicant's commitment to building 15 specific cell sites in high-cost areas that it would not otherwise include in its network expansion plans because of cost issues.<sup>53</sup> In its final order, the Minnesota Public Utilities Commission (Minnesota Commission) found it adequate that the company was able to offer its services through approximately 200 cell sites in and around the state; pledged to build an additional 15 cell sites upon designation as an ETC; pledged to meet customer orders for new service

<sup>50</sup> *Id.* at 15173, para. 13.

<sup>51</sup> See *Arizona Smith Bagley ETC Order* at 6.

<sup>52</sup> *Id.*

<sup>53</sup> See *Petition of Midwest Wireless Communications, L.L.C., for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT-6153/AM-02-686, Findings of Fact, Conclusions of Law, and Recommendation at 6, 11 (Minn. Office of Admin. Hearings Dec. 31, 2002) (*Minnesota ALJ ETC Recommendation*).

through a variety of measures including additional cell sites, cell extenders, rooftop antennae, high-powered phones, and the resale of existing service; and was willing to address a customer's request for service by developing a schedule for extending service.<sup>54</sup> The Regulatory Commission of Alaska (Alaska Commission) recently granted ETC status to a commercial mobile radio services (CMRS) provider and stated that the provider need not prove its ability to build facilities throughout every portion of the incumbent LEC's service area but must demonstrate that its methods of providing service throughout the incumbent LEC's service area are reasonable.<sup>55</sup> The Alaska Commission found reasonable a seven-step plan that Alaska Digitel proposed for serving customers.<sup>56</sup>

25. In the Minnesota proceeding discussed above, the Minnesota ALJ examined the cost of equipment as another way to determine whether the carrier was willing and able to compete for local exchange service as an ETC.<sup>57</sup> Specifically, the ALJ determined that the cost of installation and customer premises equipment necessary to provide the ETC applicant's basic universal service package should be considered as part of this analysis. The ALJ found that the cost of this equipment to the consumer is relevant in determining whether a carrier has a bona fide intent to compete for local exchange service. Further, the ALJ determined that the ETC applicant's commitment to provide the necessary equipment at little or no cost was driven by a desire to compete for local service.

26. State commissions may also choose to require competitive ETCs to explore the possibility of serving customers through the resale of another carrier's service. If an ETC receives a reasonable request for service and yet is unable to extend its network to meet the request, it still has the option of serving that customer through resale. States have discretion to require ETC applicants to incorporate resale in their plans to serve all customers upon reasonable request as a condition of ETC designation. The commitment to incorporate resale into such plans may demonstrate an applicant's capability and commitment to providing service. We note that, while section 214(e)(1) permits an ETC to offer the services supported by universal service using its own facilities, or a combination of its own facilities and resale, ETCs may

<sup>54</sup> See *Minnesota Midwest Wireless ETC Order* at 6.

<sup>55</sup> See *Alaska Digitel ETC Order* at 8-9. A "commercial mobile service" is defined as any mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission. 47 U.S.C. § 332(d)(1). A "mobile service" is defined as a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes: (1) both one-way and two-way radio communication services; (2) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed as an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and (3) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" or any successor proceeding. 47 U.S.C. § 153(27).

<sup>56</sup> See *Alaska Digitel ETC Order* at 8-9. The plan states that if a customer is not in an area where the CMRS provider, Alaska Digitel, currently provides service, Alaska Digitel will: (1) Determine whether the customer's equipment can be modified or replaced to provide acceptable service; (2) Determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service; (3) Determine whether adjustments at the nearest cell site can be made to provide service; (4) Determine whether a cell extender or repeater can be employed to provide service; (5) Determine whether there are any other adjustments to network or customer facilities that can be made to provide service; (6) Explore the possibility of resale; and (7) Determine whether an additional cell site can be constructed to provide services, and evaluate the costs and benefits of using high cost support to serve the number of customers.

<sup>57</sup> See *Minnesota ALJ ETC Recommendation* at 14-15.

not provide such services solely through resale.<sup>58</sup> A state commission is not authorized to designate as an ETC a carrier that offers the supported services solely through the resale of another carrier's services.<sup>59</sup>

27. States should determine, pursuant to state law, what constitutes a "reasonable request" for service. Once designated as an ETC, a new entrant is required, as the incumbent LEC is required, to serve new customers upon reasonable request.<sup>60</sup> For example, as part of the seven-step plan in the *Alaska Digitel ETC Order*, if the ETC finds that it is unable to provide service to a customer short of constructing a new cell site, the ETC will report that to the Alaska Commission, providing the cost of construction, its position on whether the request for service is reasonable and whether high-cost funds should be expended on the request.<sup>61</sup> The Alaska Commission found that the ETC applicant's plan was a reasonable means for the carrier to provide service throughout the service area upon reasonable customer request and determined that it would address any requests by the ETC to deny service on a case-by-case basis.<sup>62</sup> We recognize that states have different requirements regarding line extensions and policies regarding carrier-of-last resort obligations. We recommend that build-out requirements be harmonized with any existing policies regarding line extensions and carrier-of-last resort obligations.

28. We also recommend that the Commission adopt guidelines encouraging states, as a condition of ETC designation, to require competitive ETCs to be prepared to provide equal access if all other ETCs in that service area exercise their rights to relinquish their designations pursuant to section 214(e)(4). Under section 214(e)(4), when an ETC seeks to relinquish its ETC designation, the state commission will require the remaining ETC or ETCs to serve the customers that had been served by the relinquishing carrier.<sup>63</sup> Incumbent LECs are required to provide equal access.<sup>64</sup> Thus, this recommended guideline will protect consumers in the event of relinquishment by ensuring that consumers will continue to have equal access to long distance providers, without imposing any unnecessary administrative burdens on the remaining ETC or ETCs.<sup>65</sup> We recognize that the Commission did not resolve the issue of whether to include equal access in the definition of universal service.<sup>66</sup> In the *Definitions Order*, the Commission

<sup>58</sup> 47 U.S.C. § 214(e)(1).

<sup>59</sup> 47 C.F.R. § 54.201(i).

<sup>60</sup> See *Section 214(e) Declaratory Ruling*, 15 FCC Rcd at 15175, para. 17 (stating that once designated as an ETC, a new entrant is required, as the incumbent is required, "to extend its network to serve new customers upon reasonable request.").

<sup>61</sup> *Alaska Digitel ETC Order* at 9.

<sup>62</sup> *Id.*

<sup>63</sup> 47 U.S.C. § 214(e)(4). The statutory provision states that "[a] State commission . . . shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier." *Id.* The carrier seeking to relinquish its designation must give advance notice to the state commission. Prior to allowing the carrier to cease providing universal service in the area, the remaining ETC or ETC will be required to ensure that all customers served by the relinquishing carrier will continue to be served. The remaining ETC or ETCs will be permitted up to one year from the approval of the request to relinquish ETC status to purchase facilities or equipment and complete construction to be able to serve the relinquishing carrier's customers. *Id.*

<sup>64</sup> See 47 U.S.C. § 251(g).

<sup>65</sup> We note that as stated above, the remaining ETC or ETCs will have one year from the date of a state commission's approval of relinquishment to purchase equipment and/or construct facilities in order to serve the relinquishing carrier's customers. See 47 U.S.C. § 214(e)(4).

<sup>66</sup> See *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, CC Docket No. 96-45, 18 FCC Rcd 15090, 15104, para. 33 (2003) (*Definitions Order*).

stated that it believed that any determination regarding equal access would be premature because of the scope of the instant proceeding.<sup>67</sup> It deferred consideration of the equal access issue pending resolution of this proceeding.<sup>68</sup> As discussed below, we decline to recommend that the Commission modify the basis of support in areas served by multiple ETCs at this time, but recommend that the Joint Board and the Commission continue to consider possible modifications to the basis of support in a broader context.<sup>69</sup> We make no recommendation as to whether to include equal access in the definition of universal service at this time.

29. We recommend that the Commission clarify its decision in the *Western Wireless Kansas CMRS Order*.<sup>70</sup> In that order, the Commission determined that Western Wireless' Basic Universal Service (BUS) offering in Kansas was a CMRS service and therefore, the Kansas Corporation Commission was preempted from regulating BUS entry or rates and from requiring equal access for telephone toll services.<sup>71</sup> We believe that this case could be interpreted as precluding states from imposing equal access requirements on CMRS carriers under any conditions. We believe, however, that section 332(c)(8) may be interpreted differently, and we recommend that the Commission clarify what it intended. For example, in a separate proceeding some parties argued that section 332(c)(8) of the Act does not prevent the Commission from requiring CMRS providers to provide equal access in order to receive universal service funds.<sup>72</sup> They argued that section 332(c)(8) only prevents the Commission from requiring CMRS carriers to provide equal access as a general condition of mobile service.<sup>73</sup>

### (iii) Ability to Remain Functional in Emergencies

30. We recommend that the Commission adopt a guideline encouraging states to require ETC applicants to demonstrate the ability to remain functional in emergency situations. We believe this to be an important guideline because as noted by at least one commenter, the "security of a carrier's network and the ability to protect critical telecommunications infrastructure should be a major consideration in evaluating the public interest."<sup>74</sup> We recommend that the Commission further develop the record on specific requirements state commissions may choose to consider in evaluating an ETC applicant's ability to remain functional in emergencies. For example, the State of Vermont Public Service Board (Vermont Commission), in analyzing the public interest in an ETC proceeding, recently examined an ETC applicant's ability to remain functional in emergencies.<sup>75</sup> The Vermont Commission made a detailed factual finding about the applicant's technical capabilities to remain functional in emergencies, as well as

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> See *infra* discussion at Part IV.

<sup>70</sup> *Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas Is Subject to Regulation as Local Exchange Service*, Memorandum Opinion and Order, WT-Docket No. 00-239, 17 FCC Rcd 14802 (2002) (*Western Wireless Kansas CMRS Order*).

<sup>71</sup> *Id.* at 14820, para. 34.

<sup>72</sup> *Definitions Order*, 18 FCC Rcd at 15103, para. 31.

<sup>73</sup> *Id.*

<sup>74</sup> OPASTCO Comments, Attachment at 35.

<sup>75</sup> See *Vermont Unicel ETC Order* at 12-13.

the applicant's track record for maintaining its network in a power outage.<sup>76</sup> Additionally, the Public Utility Commission of Texas (Texas Commission), as a condition of receiving universal service support, required an ETC to provide a minimum of four hours of battery reserve without voltage falling below the level required for proper operation of all equipment.<sup>77</sup>

(iv) Consumer Protection

31. We recommend that the Commission adopt a guideline indicating that state commissions may properly impose consumer protection requirements as part of the ETC designation process. We believe that imposing consumer protection requirements as part of the ETC designation process may be consistent with "the public interest, convenience and necessity" to ensure that consumers are able to receive an evolving level of universal service.<sup>78</sup> Any consumer protection requirements imposed on ETCs should further the universal service goals contemplated in section 254(b) of the Act, and should not be imposed merely for the sake of regulatory parity.<sup>79</sup>

32. State commissions have imposed various consumer protection requirements as a condition of granting a request for ETC designation. The Vermont Commission, for example, has subjected ETCs to its rules regarding disconnections and treatment of customer deposits as a condition of ETC designation.<sup>80</sup> Similarly, as a condition of receiving ETC designation, the Arizona Commission required a wireless carrier to submit consumer complaints "arising from its offering as an ETC."<sup>81</sup> In extending consumer protection requirements to competitive ETCs as a condition of granting ETC designations, state commissions have noted that states are free to impose their own eligibility requirements in making ETC determinations, consistent with the Fifth Circuit's interpretation of the Act.<sup>82</sup>

33. We reject arguments that subjecting competitive ETCs, particularly wireless competitive

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<sup>76</sup> *Id.* ("RCC provides most cell sites with backup power to maintain the continuity of its service in the event its main power supply goes down. RCC uses batteries that provide between two to three hours of power backup. RCC also equips hub cell sites . . . or remote cell sites with additional power backup from a propane or diesel generator, which extends the power backup to at least 12 hours. RCC maintains a large diesel generator at its switch location in Colchester, Vermont, that will provide up to two days of extended power backup before requiring refueling. The power backup facilities enable RCC to maintain its wireless network, including its 911 service, even in the event of a sustained power outage. RCC demonstrated its ability to maintain its network during the 1998 ice storm, with its resultant extended power and landline-telephone-service outages, when RCC kept a majority of its cell sites and switch operational, served as the primary line of communications for public-safety personnel, and donated numerous cell phones to the National Guard, Red Cross and the State Police to ensure those organizations maintained critical lines of communications.").

<sup>77</sup> See *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and PUC Subst. R. 26.418*, PUC Docket No. 22289, SOAH Docket No. 473-00-1167, Order at 25 (Tex. Pub. Util. Comm'n Oct. 30, 2000) (*Texas WWC ETC Order*).

<sup>78</sup> See 47 U.S.C. § 254(c).

<sup>79</sup> 47 U.S.C. § 254(b).

<sup>80</sup> *Vermont Unicel ETC Order* at 74.

<sup>81</sup> *Arizona Smith Bagley ETC Order* at 14 (finding that Smith Bagley's ETC designation application should be granted subject to the condition that the carrier submit consumer complaints arising from its offering as an ETC to the Arizona Commission's Consumer Service Division and provide a regulatory contact).

<sup>82</sup> *Vermont Unicel ETC Order* at 23-34; *Arizona Smith Bagley ETC Order* at 12-14.

ETCs, to consumer protection requirements is inconsistent with section 332 of the Act.<sup>83</sup> While section 332(c)(3) of the Act generally preempts states from regulating the rates and entry of CMRS providers, it specifically allows states to regulate the other terms and conditions of commercial mobile services.<sup>84</sup> Accordingly, while wireless competitive ETCs, for example, otherwise may not be subject to state consumer protection requirements, we believe that states may extend generally applicable requirements to all ETCs in order to preserve and advance universal service, consistent with sections 214 and 254 of the Act.<sup>85</sup> In addition, seeking ETC designation is a choice. We therefore agree with commenters that preemption from state regulation afforded under section 332 of the Act should not be equated with conditions that apply only to carriers that choose to seek ETC designation and universal service support.<sup>86</sup>

34. Even if some ETCs, including CMRS carriers, otherwise would not be subject to state consumer protection requirements, states may extend generally applicable requirements to all ETCs to ensure that universal service goals are met. Our recommendation here, however, is not that competitive ETCs should be required to comply with all of the standards imposed on wireline incumbent LECs as some commenters have proposed.<sup>87</sup> States should not require regulatory parity for parity's sake. Rather, requirements should be imposed on ETCs only to the extent necessary to further universal service goals, including the provision of high-quality service throughout the designated service area.

#### (v) Local Usage

35. Consistent with the requirement that ETCs offer local usage, states may consider how much local usage ETCs should offer as a condition of federal universal service support. In the *First Universal Service Report and Order*, the Commission determined that ETCs should provide some minimum amount of local usage as part of their "basic service" package of supported services.<sup>88</sup> Thus, local usage is one of the supported services that ETCs are required to provide in order to receive federal universal service support. Although the Commission has not set a minimum local usage requirement, there is nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status. As determined by the Fifth Circuit in *TOPUC v. FCC*, states may establish their own eligibility requirements for ETC applicants.<sup>89</sup> In fact, in recently deciding that

<sup>83</sup> Western Wireless Reply Comments at 45-47; Rural Cellular Ass'n/Alliance of Rural CMRS Carriers Comments at 18.

<sup>84</sup> See 47 U.S.C. § 332(c)(3). Additionally, section 332(c)(3) of the Act also states that "[n]othing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications services at affordable rates." We note, however, that at this time, although they may reach this level in the future, commercial mobile services are not yet known to be a substitute for a substantial portion of communications in any state.

<sup>85</sup> 47 U.S.C. §§ 214, 254.

<sup>86</sup> See, e.g., CenturyTel Reply Comments at 7-9; Nebraska Rural Indep. Cos. Comments at 30; OPASTCO Reply Comments at 27-28.

<sup>87</sup> See, e.g., CenturyTel Reply Comments at 6-8; OPASTCO Reply Comments at 25-28; USTA Comments at 14.

<sup>88</sup> See *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 8812-14 (1997) (*First Universal Service Report and Order*) (subsequent history omitted). Although the Commission's rules define "local usage" as "an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users," the Commission has not specified a number of minutes of use. See 47 C.F.R. § 54.101(a)(2).

<sup>89</sup> See *TOPUC v. FCC*, 183 F.3d at 418.

unlimited local usage should not be added to the list of services supported by federal universal service, the Commission found that the states are in a better position to determine whether unlimited local usage offerings are beneficial in particular circumstances.<sup>90</sup>

36. In considering local usage, states may choose to compare an incumbent LEC's offering of a local calling plan to the local calling plan proposed by the ETC applicant. For example, the Arizona Commission noted an ETC applicant's plan to propose 30 free minutes per month throughout its network, which was a much larger area than the local exchange area provided by the LECs in the same region.<sup>91</sup> The Arizona Commission compared the ETC applicant's calling plan with that of the landline service offerings and determined that based on the size of the calling area, toll calling on the ETC applicant's network would cost the same, or less, as it would on the incumbent LEC's network.<sup>92</sup> It also considered the applicant's plan to provide unlimited free calls to a long list of government, social service, health facilities, educational institutions, and emergency numbers.<sup>93</sup>

## 2. Public Interest Determinations

37. The minimum eligibility requirements recommended above will assist states in ensuring that additional ETCs are able and willing to serve all customers in the designated service area upon reasonable request. Before an additional ETC can be designated, however, the state commission must also determine that the designation is consistent with the public interest, convenience and necessity. Additionally, for areas served by rural carriers, the Act requires a separate finding that designation of an additional ETC is in the public interest. While Congress did not specifically prescribe how these public interest tests would be applied, state commissions and the Commission have developed analyses that address various factors affecting the public interest. These include, but are not limited to, benefits of increased competition and choice and potential harm to consumers. Below, we discuss the statutory public interest requirement, how different states have applied it, and additional factors states may consider in making public interest determinations. Before reaching those factors, however, we make some observations concerning the statutory provisions that apply when an ETC application covers an area served by a rural carrier.

### a. Additional ETCs in Areas Served by Rural Carriers

38. The Joint Board interprets section 214(e)(2) as contemplating use of a higher level of scrutiny for ETC applicants seeking designation in areas served by rural carriers.<sup>94</sup> In these areas, the public interest determination for an additional ETC is subject to two special statutory rules. First, section 214(e)(2) requires states to designate more than one ETC in areas served by non-rural carriers (so long as doing so is "consistent with the public interest, convenience, and necessity"); but it confers discretion on the states to designate more than one ETC in areas served by rural carriers. In these areas, the Act provides that a state commission "may" grant the designation.<sup>95</sup> Also, as noted above, the last sentence of

<sup>90</sup> See *Definitions Order*, 18 FCC Rcd at 15096, para. 14.

<sup>91</sup> *Arizona Smith Bagley ETC Order* at 6.

<sup>92</sup> *Id.* at 7 (noting that a local incumbent LEC charged \$15.90 for a single residential access line but that this access provides a local calling area which is a small fraction of that being provided by Smith Bagley (SBI), and with most calls being toll, 30 minutes of toll calling will result in an approximate total charge of \$25.40 for the wireline package as opposed to \$24.99 for the equivalent SBI offering).

<sup>93</sup> *Id.*

<sup>94</sup> 47 U.S.C. § 214(e)(2).

<sup>95</sup> *Id.* See also *TOPUC v. FCC*, 183 F.3d at 418.



section 214(e)(2) requires that before a state designates an additional ETC in an area served by a rural carrier, the state must find the designation to be in the public interest.<sup>96</sup> These two additional requirements demonstrate Congress's recognition that supporting competition might not always serve the public interest in areas served by rural carriers, and Congress' intent that state commissions exercise discretion in deciding whether the designation of an additional ETC serves the public interest. As discussed above, the low customer densities and high per-customer cost characteristics of many rural carrier study areas also support a more rigorous standard of eligibility.<sup>97</sup> Thus, we agree with commenters that section 214(e)(2) provides the state commissions with the obligation and statutory duty to perform an in-depth public interest analysis concerning ETC applications in rural carrier study areas.<sup>98</sup>

#### **b. Public Interest Considerations**

39. While Congress did not establish specific criteria to be applied under the public interest tests in section 214(e)(2) of the Act, it is clear that the public interest must be analyzed in a manner that is consistent with the purposes and goals of the Act itself.<sup>99</sup> Certain state commissions have already based their public interest findings on relevant universal service principles. For example, the public interest test performed by the Texas Commission is guided by the fundamental goals of preserving and advancing universal service, and the component goals of ensuring the availability of quality telecommunications services at just, reasonable and affordable rates, and promoting the deployment of advanced telecommunications and information services to all regions of the Nation, including rural and high-cost areas.<sup>100</sup>

40. Several state commissions have considered various additional factors in analyzing the public interest, such as the potential benefits consumers could receive from designation of an additional ETC in a particular area.<sup>101</sup> The elements that the Alaska Commission has considered in determining the public interest include: new choices for customers; affordability; quality of service; service to unserved customers; comparison of benefits to public cost; and considerations of material harm.<sup>102</sup> Similarly, the Commission has considered whether consumers were likely to benefit from increased competition; whether the additional designation will provide benefits not available from incumbent carriers; whether consumers may be harmed should the incumbent withdraw from the service area; and whether there would be harm to a rural incumbent LEC.<sup>103</sup>

41. These commissions have also applied the public interest factors to the particular facts before them in an ETC proceeding. In evaluating service to unserved customers, the Alaska Commission took

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<sup>96</sup> 47 U.S.C. § 214(e)(2).

<sup>97</sup> See *supra* para. 18.

<sup>98</sup> See, e.g., Fred Williamson and Assocs. Comments at 19; OPASTCO Comments at 40-41.

<sup>99</sup> Western Wireless Comments, Attachment E at 7.

<sup>100</sup> See generally *Texas WWC ETC Order*. See also 47 U.S.C. § 254.

<sup>101</sup> See *Alaska Digitel ETC Order* at 12.

<sup>102</sup> *Id.* at 12-16.

<sup>103</sup> See, e.g., *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 18133 (2001) (*Western Wireless Pine Ridge Order*); see also *Federal State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, 17 FCC Rcd 23532 (Wir. Comp. Bur. 2002) (*RCC Holdings Order*).

note of an ETC's plan to build out six additional cell sites and ability to reach unserved customers in three specific communities if it received ETC designation.<sup>104</sup> The Commission, in evaluating whether an additional designation would provide benefits not available from incumbent carriers, noted that the ETC applicant could offer a wider local calling area than that provided by the rural incumbent LEC and could provide a variety of calling plans to consumers.<sup>105</sup> The Commission determined that such options may make intrastate toll calls more affordable to those consumers.<sup>106</sup> The Commission also evaluated whether there would be harm to the rural incumbent LEC and affected rural consumers by undertaking an extensive cream skimming analysis.<sup>107</sup> Based on the analysis, the Commission determined that the ETC applicant would not be serving only low-cost areas at the exclusion of any high-cost areas.<sup>108</sup>

42. We disagree with commenters who contend that we should encourage states to adopt a specific cost-benefit test for the purpose of making public interest determinations.<sup>109</sup> Several commenters propose that state commissions should more explicitly balance the benefits of granting an ETC application (e.g., enhancement of competition, extension of service to previously unserved areas, or introduction of mobile services) against the costs (e.g., impact of supporting multiple ETCs on fund growth).<sup>110</sup> While we agree that a consideration of both benefits and costs is inherent in conducting a public interest analysis, we decline to provide any more specific guidance on how this balancing should be performed. We believe that the difficulty of quantifying and weighing the various factors that may be relevant to determining the public interest militate against attempting to create a rigid formula for balancing costs and benefits.

43. We believe, however, that states making public interest determinations may properly consider the level of federal high-cost per-line support to be received by ETCs.<sup>111</sup> High-cost support is an explicit subsidy that flows to areas with demonstrated levels of costs above various national averages. Thus, one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in any area may be the level of per-line support provided to the area. If the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund. Moreover, if the Commission were to cap per-line support upon entry of a competitive ETC and impose a primary-connection restriction, as discussed below, designating an excessive number of ETCs could dilute the amount of support available to each ETC to the point that each carrier's ability to provide universal service might be jeopardized. State commission consideration of high-cost support on a dollar per line basis would allow equivalent comparison of support among study areas. Per-line support is a single "marker" that encompasses various underlying factors that may impact the determination of whether it is in the public interest to have an additional subsidized carrier entering a carrier's study area. Many factors mentioned by commenters as relevant to the public interest determination – such as topography, population density, line density, distance between wire centers, loop lengths and levels of investment –

<sup>104</sup> See *Alaska Digitel ETC Order* at 14.

<sup>105</sup> *RCC Holdings Order*, 17 FCC Rcd at 23541, para. 24.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 23542-44, paras. 27-31.

<sup>108</sup> *Id.* at 23543-44, para. 30.

<sup>109</sup> See, e.g., OPASTCO Comments at 41-42; USTA Comments at 11-14; Western Alliance Comments at 11-14.

<sup>110</sup> See, e.g., OPASTCO Comments, Attachment A at 27-30.

<sup>111</sup> As used here, "high-cost support" means high-cost model support, high-cost loop support, safety net additive support, local switching support, long-term support, interstate access support, and interstate common line support.

may all affect the level of high-cost support received in an individual study area. High-cost support is also a concrete, objective, transparent, and readily obtainable factor that may help state commissions avoid generalized or abstract arguments about the harms or benefits of additional ETCs.<sup>112</sup>

44. Although we believe that state commissions may consider the amount of per-line support as part of the public interest analysis, we decline to adopt specific benchmarks based on per-line support to guide the states' public interest determinations. We are concerned that any benchmark we recommend would be arbitrary. We do, however, recommend that the Commission solicit comment on whether such national benchmarks merit additional consideration. We recommend that the Commission solicit comment on the basis, calculation, practical impact, and examples of any proposed benchmarks based on per-line support.

45. We also recommend that the Commission seek comment on the applicability of the proposed designation guidelines to ETCs that have already been designated. We believe states (and the Commission) already possess the authority to rescind ETC determinations for failure to comply with the requirements of Section 214(e) of the Act and any other conditions imposed by the state.<sup>113</sup> The Commission should provide guidance on whether states choosing to apply the new federal guidelines to currently designated competitive ETCs should also rescind the designation of a previously designated competitive ETC if the state finds that the competitive ETCs designation no longer serves the public interest. We believe the Commission should also consider if it would be beneficial to issue guidance on whether states should allow ETCs some reasonable transition period to bring their operations into compliance with any new state ETC requirements. Alternatively, the Commission may wish to consider whether ETC designation for competitive carriers could be grandfathered for some period of time to avoid significant market disruptions.

### 3. Annual Certification Requirement

46. We recommend that the Commission encourage states to use the annual certification process for all ETCs to ensure that federal universal service support is used to provide the supported services and for associated infrastructure costs. We make this recommendation in order to ensure the accountability of all ETCs for proper use of funds. Annual review provides states the opportunity for periodic review of ETC fund use.<sup>114</sup> Additionally, we continue to believe that the state certification process provides the most reliable means of determining whether carriers are using support in a manner consistent with section 254.<sup>115</sup>

47. States should use the annual certification process to ensure that federal universal service

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<sup>112</sup> Line counts and support amounts for each study area served by rural carriers are published quarterly by the Universal Service Administrative Company (USAC).

<sup>113</sup> See *Section 214(e) Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15. By this Recommended Decision, it is not the intent of the Joint Board to limit the discretion possessed by states and the Commission to review and rescind previous ETC determinations.

<sup>114</sup> See *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, 14 FCC Rcd 20432, 20482-83, para. 95 (1999) (*Ninth Report and Order*) (stating that accountability for the use of federal funds in the state ratemaking process is an appropriate mechanism to ensure that non-rural carriers use high-cost support for the provision, maintenance and upgrading of facilities and services for which the support is intended); see also *Rural Task Force Order*, 16 FCC Rcd at 11317-18, para. 187 (anticipating that states would take the appropriate steps to account for the receipt of high-cost support and ensure that federal support is being applied in a manner consistent with section 254).

<sup>115</sup> *Rural Task Force Order*, 16 FCC Rcd at 11317-18, para. 187.

support is used to provide the supported services and for associated infrastructure costs. States should examine compliance with build-out plans. Some commenters also suggest that states should consider instituting reporting requirements and conducting audits on all ETCs.<sup>116</sup> States could implement regulatory provisions similar to those in Alaska where the competitive ETC is required to make the same filing that the rural carriers makes through the Alaska Commission's annual use-of-funds certification process.<sup>117</sup> As a condition of ETC status, the Public Service Commission of West Virginia required a competitive carrier to file annual certifications including the amount of support it received in the year and a statement of how such funds were spent or invested.<sup>118</sup> The Minnesota Commission requires ETCs to file affidavits, additional documentation pertaining to the amount of federal high-cost support received for the prior year, and the ETC's operational and capital expenditures.<sup>119</sup> These are merely examples of what a state commission's annual certification requirement may entail. State commissions will, of course, have the flexibility to adopt certification requirements that are appropriate for their state and the particular service area in which an ETC is designated.<sup>120</sup>

48. Where an ETC fails to comply with requirements in section 214(e) and any additional requirements proposed by the state commission, the state commission may decline to grant an annual certification or may rescind a certification granted previously.<sup>121</sup> Several states have already adopted such requirements in their ETC designation processes. The Alaska Commission required a competitive ETC to file an annual certification in order to monitor the continued appropriate use of funds.<sup>122</sup>

#### 4. Service Area Redefinition Process/Rural Carrier Disaggregation of Support

49. In this subsection, we review the service area redefinition process for areas served by rural carriers and assess the impact that disaggregation and targeting of support has on that process. We begin by reviewing service area redefinition procedures. Section 214(e)(5) of the Act provides that states may establish geographic service areas within which ETCs are required to comply with universal service obligations and are eligible to receive universal service support.<sup>123</sup> However, the Act states that for an area served by a rural carrier, a company's service area for the purposes of ETC designation will be the rural carrier's study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company."<sup>124</sup> Thus, the Act established different procedures and

<sup>116</sup> See Letter from David L. Sieradzki, Counsel for Western Wireless, to Marlene Dortch, FCC, dated Sept. 8, 2003 (Western Wireless Sept. 8 *ex parte*).

<sup>117</sup> See *Alaska Digital ETC Order* at 18-19.

<sup>118</sup> See *Petition for Consent and Approval for Highland Cellular to be Designated as an Eligible Telecommunications Carrier, in Areas Served by Citizens Telecommunications Company of West Virginia*, Case No. 02-1453-T-PC, Recommended Decision at Conclusions of Law para. 30 (Pub. Serv. Comm'n of W.Va. Sept. 15, 2003).

<sup>119</sup> See *Minnesota Midwest Wireless ETC Order* at 9.

<sup>120</sup> We note that states are currently subject to annual certification requirements in order for ETCs operating within their jurisdictions to receive federal universal service support. See 47 C.F.R. §§ 54.313, 54.314, 54.316.

<sup>121</sup> See *Section 214(e) Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15.

<sup>122</sup> See *Alaska Digital ETC Order* at 18-19.

<sup>123</sup> See 47 U.S.C. § 214(e)(5). "The term 'service area' means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms."

<sup>124</sup> *Id*

standards for determining ETC service areas depending on whether a rural or non-rural carrier's study area is involved.

50. In the *First Recommended Decision*, the Joint Board generally recommended that the Commission retain the study areas of rural telephone companies as the service areas for ETCs. The Joint Board provided three reasons for its recommendation: (1) the potential for "cream skimming" is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural carrier's study area; (2) the 1996 Act, in many respects, places rural carriers on a different competitive footing from other local exchange companies; and (3) there would be an administrative burden imposed on rural carriers by requiring them to calculate costs at something other than the study area level.<sup>125</sup>

51. In response to the Joint Board's recommendations, the Commission agreed that, at that time, the study areas of rural telephone companies should be retained as the rural carrier service areas.<sup>126</sup> However, the Commission also discussed the state commissions' authority to redefine the service area served by a rural carrier and adopted rules providing the process for service area redefinition.<sup>127</sup> Section 54.207(c) of the Commission's rules provides the mechanism by which a state commission may propose to redefine a rural carrier's service area for purposes of determining universal service obligations and support mechanisms.<sup>128</sup> Section 54.207(c)(3) provides that the Commission may initiate a proceeding to consider a state commission's proposal to redefine the area served by a rural carrier within ninety days of the release date of a public notice.<sup>129</sup> If the Commission initiates a proceeding to consider the petition, the proposed definition will not take effect until both the state commission and the Commission agree upon the definition of a rural carrier service area, in accordance with section 214(e)(5) of the Act.<sup>130</sup> If the Commission does not act on a petition to redefine a service area within 90 days of the release of the public notice, the definition proposed is deemed approved by the Commission and takes effect in accordance with state procedures.<sup>131</sup> The Commission's intent in adopting these procedures was, in part, to minimize administrative delay.<sup>132</sup>

<sup>125</sup> See *Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, 12 FCC Rcd 87, 179-80, paras. 172-74 (Jt. Bd. 1996) (*First Recommended Decision*).

<sup>126</sup> *First Universal Service Report and Order*, 12 FCC Rcd at 8881-82, para. 189.

<sup>127</sup> *Id.* at 8880-81, para. 186-88. As required by Section 214(e)(5) of the Act, the rural service area redefinition rules require the state commission to take into account the Joint Board's recommendations cited above, and provide for approval of the service area redefinition by both the state and the Commission. See 47 C.F.R. § 54.207.

<sup>128</sup> See 47 C.F.R. §§ 54.207(a), (c). The Commission has authority to propose a service area redefinition on its own motion under section 54.207(d) of the Commission's rules but such redefinition would not go into effect without the agreement of the relevant state commission. See 47 C.F.R. § 54.207(d).

<sup>129</sup> 47 C.F.R. § 54.207(c)(3). Under section 54.207(c)(1), a state may petition the Commission for a redefinition or a party may petition the Commission with the state's proposal to redefine. The petition must contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural carrier. See 47 C.F.R. § 54.207(c)(1).

<sup>130</sup> See 47 C.F.R. § 54.207(c)(3)(i); 47 U.S.C. § 214(e)(5). Under section 54.207(e) of the Commission's rules, the Commission delegates its authority under section 54.207(c) to the Chief of the Wireline Competition Bureau. 47 C.F.R. § 54.207(e).

<sup>131</sup> 47 C.F.R. § 54.207(c)(3)(ii).

<sup>132</sup> *First Universal Service Report and Order*, 12 FCC Rcd at 8881, para. 188.

52. In the *First Universal Service Report and Order*, the Commission also interpreted the language in Section 214(e)(5) of the Act requiring state commissions and the Commission to take into account the recommendations of the Joint Board.<sup>133</sup> The Commission concluded that this language indicates that the states and the Commission must give full consideration to the Joint Board's recommendations on service area redefinition and must explain why they are not adopting the recommendations of the Joint Board.<sup>134</sup> When proposing to redefine service areas, state commissions and the Commission have considered the Joint Board's recommendations in the *First Recommended Decision* and evaluated the Joint Board's reasons for recommending that the Commission retain the study area of a rural carrier as the service area.<sup>135</sup> Therefore, when proposing to redefine rural carrier service areas, state commissions and the Commission have analyzed the potential for cream skimming as a result of the proposed redefinition.<sup>136</sup>

53. In evaluating whether a service area redefinition will provide opportunities for cream skimming, some state commissions and the Commission have considered, among other things, whether universal service support in the affected rural service area has been disaggregated.<sup>137</sup> In the *Rural Task Force Order*, the Commission determined that support should be disaggregated and targeted below the study area level to eliminate uneconomic incentives for competitive entry caused by the averaging of support across all lines served by a carrier within its study area.<sup>138</sup> Under disaggregation and targeting, per-line support is more closely associated with the cost of providing service.<sup>139</sup> In the *Rural Task Force Order*, the Commission also concluded that one of the factors the state commissions should consider in determining whether to certify new ETCs for a service area other than the entire study area of a rural carrier is the level of disaggregation.<sup>140</sup>

54. The provisions contained in the *Rural Task Force Order* for disaggregation and targeting of universal service support may help alleviate some concerns regarding cream skimming. Permitting rural carriers to disaggregate and target universal service support allows them to direct universal service support to those zones within the study area where support is most needed. Targeting support in this manner also promotes a better matching of per-line support to the rural carriers' costs of providing

<sup>133</sup> By its rules the Commission has concluded that the Joint Board referred to in Section 214(e)(5) of the Act is the Federal-State Joint Board on Universal Service. We endorse this interpretation. We do not believe that the Act requires a special Joint Board to be convened every time there is a request for rural service area redefinition. Such an interpretation would obviously be administratively unworkable.

<sup>134</sup> *First Universal Service Report and Order*, 12 FCC Rcd at 8880-81, para. 187.

<sup>135</sup> See, e.g., *Petition of the Minnesota Public Utilities Commission for Agreement to Redefine the Service Areas of Twelve Minnesota Rural Telephone Companies*, CC Docket No. 96-45, filed on August 7, 2003 (*Minnesota Redefinition Petition*); *Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of Wiggins Telephone Association, A Rural Telephone Company*, CC Docket No. 96-45, filed on May 30, 2003; *RCC Holdings Order*, 17 FCC Rcd at 23547-48, paras. 38-41.

<sup>136</sup> *Id.* See also *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22, 2004), at paras. 41-42 (*Virginia Cellular ETC Order*).

<sup>137</sup> See, e.g., *RCC Holdings Order*, 17 FCC Rcd at 23544, para. 31; *Minnesota Redefinition Petition* at 11-12.

<sup>138</sup> See *Rural Task Force Order*, 16 FCC Rcd at 11302, para. 145.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 11308-09, para. 164. The Commission stated that it believed that the level of disaggregation should be considered to ensure that competitive neutrality is maintained between incumbents and competitive ETCs. *Id.*

service, and helps reduce the economic distortions that could lead to cream skimming. In a study area with disaggregated support, a competitive ETC designated for a service area smaller than the study area will be limited to receiving only the per-line support established for that area. In many cases, the levels of disaggregated support have been established by the rural carrier itself under "Path 3" disaggregation.<sup>141</sup> Although disaggregation may alleviate some concerns regarding cream-skimming by competitive ETCs, we hesitate to say that it necessarily addresses all concerns. For instance, the Commission has recognized that cream skimming may still be a concern where a competitor proposes to serve only the low-cost areas of a rural carrier's study area to the exclusion of high-cost areas.<sup>142</sup>

55. We continue to endorse the procedures established by the Commission in 1997 for redefinition of rural service areas. These procedures establish a presumption that a rural carrier's study area should be the service area for a new ETC, unless and until the state and the Commission working in concert decide that a different service area definition would better serve the public interest.<sup>143</sup> In making this determination, the states and the Commission place the burden of proof upon the ETC applicant. If a service area redefinition is proposed, the existing rules also require the states and the Commission to analyze the Joint Board's previously expressed concerns about cream skimming in the particular area covered by the ETC application.<sup>144</sup> Public comment is invited during every step in this process. Because we believe these rules are working to thoroughly examine public interest concerns inherent in service area redefinition, we do not believe any change is needed in these rules at this time. As with other aspects of the ETC designation process discussed above, we encourage the states and the Commission to conduct a rigorous and fact-intensive analysis of requests for service area redefinition.

### III. SCOPE OF SUPPORT

56. We recommend that the Commission limit the scope of high-cost support to a single connection that provides access to the public telephone network. As discussed below, we believe that supporting a single connection is more consistent with the goals of section 254 than the present system, and is necessary to preserve the sustainability of the universal service fund. We also believe that it would send more appropriate entry signals in rural and high-cost areas, and would be competitively neutral. To minimize the potential impact of restricting the scope of support in areas served by rural carriers, we recommend that the Commission seek comment on restating, or "rebasin," the total high-cost support

<sup>141</sup> 47 C.F.R. § 54.315(d). The rules establishing procedures for disaggregation and targeting of support provided rural carriers three choices or "paths." Under Path 1 a carrier could choose not to disaggregate support. Under Path 2 a carrier could seek to disaggregate subject to state commission approval. Under Path 3 a carrier could file a self-certified disaggregation plan with the state commission. Such self-certified plans were effective upon filing. See 47 C.F.R. § 54.315. We are aware that most rural carriers voluntarily chose Path 1 and did not disaggregate support. See USAC Universal Service Projections for the 4th Quarter 2002 (Aug. 2, 2002), Appendix HC19. Some commenters have argued that rural carriers should be allowed another round of self-certified disaggregation if there is a change in the basis of high-cost support. See, e.g., OPASTCO Comments at 48-51. We do not believe another round of self-certification is necessary since the Commission's rules already allow rural carriers, state commissions or other interested parties to seek subsequent modifications of disaggregation plans. See 47 C.F.R. §§ 54.315(b)(4), 54.315(c)(5) and 54.315(d)(5).

<sup>142</sup> See, e.g., *RCC Holdings Order*, 17 FCC Rcd at 23546, para. 35; *Virginia Cellular ETC Order*, FCC 03-338 at paras. 32-33.

<sup>143</sup> See generally *Virginia Cellular ETC Order*, FCC 03-338 at para. 41 (outlining procedures for redefinition of rural service areas).

<sup>144</sup> As discussed in Section V.B. below, we recommend that USAC be delegated authority to develop uniform standards for support disaggregation maps in electronic format. The ready availability of such support disaggregation maps should assist in the analysis of the potential for cream skimming in any particular area.

flowing to a rural carrier's study area on "primary" or single connections, and on other possible measures. Restating support would avoid any immediate effect on the total amount of high-cost support that a rural carrier receives: its support would be reduced in the future only to the extent that a competitive ETC captures primary connections. In conjunction with these measures, we also recommend that high-cost support in areas served by rural carriers be capped on a per-line basis when a competitive carrier is designated as an ETC and be adjusted annually by an index factor.<sup>145</sup>

57. We recognize that implementing support for a single connection may present significant administrative challenges. As discussed below, the record contains proposals under which consumers with more than one line would designate a primary connection, and carriers would be free to compete for the "primary" designation. These proposals hold the promise of allowing consumers, the intended beneficiaries of universal service,<sup>146</sup> to make their own universal service choices. Questions remain about the administrative feasibility of such proposals, however. We recommend that the Commission further develop the record on these and other proposals for limiting the scope of high-cost support. Our recommendations to limit the scope of support, as described herein, are conditioned on the Commission's ability to develop competitively neutral rules and procedures that do not create undue administrative burdens.<sup>147</sup>

#### A. Background

58. Under the Commission's current rules, all residential and business connections provided by ETCs are eligible for high-cost support.<sup>148</sup> In its 1996 recommendations to the Commission regarding universal service, the Joint Board recommended that support for designated services be limited to those services carried on a single connection to a subscriber's primary residence and to businesses with only a single connection.<sup>149</sup> The Joint Board concluded that support for a single connection providing the supported services would allow the "access" to telecommunications and information services contemplated in section 254(b)(3) of the Act.<sup>150</sup>

59. In the *First Universal Service Report and Order*, the Commission declined to adopt the Joint Board's recommendation regarding the scope of support for designated services.<sup>151</sup> While the Commission stated that it shared the Joint Board's concern that supporting multiple connections for residences and businesses in high-cost areas may be inconsistent with the goals of universal service, the Commission concluded at that time that limiting the scope of support prior to the introduction of a

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<sup>145</sup> As discussed below, if the Commission were to adopt the "hold harmless" approach to avoid reductions in the amount of high-cost support flowing to rural areas, the per-line support would not be capped for incumbent carriers. See *infra* para. 75. We also recommend that the Commission seek comment on whether to restate support for non-rural carriers, and on whether transitional measures should be adopted for support received by competitive ETCs operating as of the release date of this Recommended Decision. See *infra* paras. 76, 87.

<sup>146</sup> *Alenco Communications, Inc. v. FCC*, 201 F.3d 601, 621 (5th Cir. 2001) (*Alenco v. FCC*) ("The purpose of universal service is to benefit the customer, not the carrier.").

<sup>147</sup> See *infra* paras. 81-83.

<sup>148</sup> *First Universal Service Report and Order*, 12 FCC Rcd at 8829-30, paras. 95-96.

<sup>149</sup> See *First Recommended Decision*, 12 FCC Rcd at 132-33, para. 89.

<sup>150</sup> *Id.*

<sup>151</sup> *First Universal Service Report and Order*, 12 FCC Rcd at 8829-30, paras. 95-96.